

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company)	
d/b/a Ameren Illinois)	
)	ICC Docket No. 14-0317
)	
Rate MAP-P Modernization Action Plan-)	
Pricing Annual Update Filing)	

EXCEPTIONS AND BRIEF ON EXCEPTIONS OF
THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois

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Table of Contents

I. INTRODUCTION1

II. Exception No. 1: Ameren’s Exhibit 19.3 Cannot Serve as the Basis for the Conclusion That Consumers Were Not Hurt By Ameren’s Treatment of the Metro East Asset Transfer Because It Is Riddled With Questionable Assumptions That Ameren Manipulated To Achieve The Result It Desired.....2
Exception No. 1 Proposed Language6

III. Exception No. 2: If The Commission Declines To Adjust The Reconciliation Balance To Which Interest Applies Pending Resolution By The Appellate Court, The Commission Should Adjust Rate Base By The Reconciliation ADIT.7
Exception No. 2 Proposed Language9

IV. Exception No. 3: The People Preserve Their Position That Interest Should Only Be Applied To The Net-Of-Tax Reconciliation Balance.....10
Exception No. 3 Proposed Language.11

V. CONCLUSION12

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NOW COME the People of the State of Illinois (“AG” or “the People”), by and through Lisa Madigan, Attorney General of the State of Illinois, pursuant to Part 200.830 of the Illinois Commerce Commission’s (“the Commission” or “ICC”) rules, 83 Ill. Adm. Code Part 200.830, and in accordance with the schedule established in this docket, hereby file their Exceptions and Brief on Exceptions to the Proposed Order (“PO”) issued by the Administrative Law Judges (“ALJs”) on October 31, 2014 in the above-captioned docket, which will establish a new electric delivery service revenue requirement for Ameren Illinois Company (“Ameren” or “AIC” or the “Company”) effective January 1, 2015.

I. INTRODUCTION

The People appreciate the PO’s careful consideration of the record evidence and the various parties’ arguments. The People take exception to the PO in two respects: First, the People take exception to the PO’s finding that Ameren’s Exhibit 19.3 provided adequate support for the proposition that ratepayers are receiving just and reasonable benefits associated with Ameren’s treatment of the accumulated deferred income tax (“ADIT”) on the Metro East assets that were transferred to AIC in 2005. Second, if the Commission still finds that it lacks statutory

discretion to deduct ADIT from the reconciliation balance before calculating interest thereon under Section 16-108.5(d)(1) of the Energy Infrastructure Modernization Act (“EIMA”), the Commission should adopt the People’s alternative proposal to include reconciliation-related ADIT in Ameren’s rate base, just as Ameren’s other Illinois distribution-jurisdictional ADIT is included in rate base. The People also provide an alternative, third exception to their second exception: if the Commission chooses to revisit the People’s principal proposal regarding the calculation of interest on the reconciliation balance, pending the appeal of that issue in the Appellate Court, it should modify the Proposed Order language accordingly.

II. Exception No. 1: Ameren’s Exhibit 19.3 Cannot Serve as the Basis for the Conclusion That Consumers Were Not Hurt By Ameren’s Treatment of the Metro East Asset Transfer Because It Is Riddled With Questionable Assumptions That Ameren Manipulated To Achieve The Result It Desired.

The People proposed at page 7 of their Initial Brief¹ that the Commission should reverse for regulatory purposes the current value, approximately \$4.897 million, of the Step-Up Basis debit entry to Ameren’s ADIT related to the transferred Metro East assets. Additionally, as the People showed at pages 9-10 of their Initial Brief, Ameren has not established that the balance of ADIT that exists today in relation to the transferred assets (net of the Step-Up Basis ADIT debit amount) exceeds the balance of ADIT that would have accumulated post-transfer in the absence of the step-up in tax basis of the transferred assets. Despite the directive in the Commission’s Order² in Docket No. 13-0301 asking Ameren in future formula rate update proceedings to demonstrate with accounting data that “AIC ratepayers were not and will not be harmed by the

¹ References to the People’s “Initial Brief” in this Brief on Exceptions shall refer to the Corrected Initial Brief of the People of the State of Illinois, filed as corrected October 14, 2014.

² Order, Docket No. 13-0301, December 9, 2013, at 32.

regulatory treatment of the internal transfer of assets,” AIC witness Stafford expressly refused in his testimony in this case to provide such an analysis, claiming that federal tax rules make it impossible to even conceive of such a comparison. *See, e.g.*, AIC Ex. 19.0 at 10.

Notwithstanding the People’s demonstration of Ameren’s inadequate showing and the limits of the Company’s imagination, the Proposed Order finds at pages 17-18 that

Having considered the evidence, the Commission is satisfied that the transfer of assets with the step up in cost basis benefitted customers overall, which is consistent with AIC’s position. The expanded analysis Mr. Stafford discusses in his surrebuttal testimony, along with Ameren Ex. 19.3, demonstrate to the Commission’s satisfaction that for regulatory treatment purposes, AIC’s position is the most appropriate.

The Commission should reject this conclusion. Ameren’s Exhibit 19.3 purported to establish that the Step-Up Basis debit entry in ADIT related to the Metro East asset transfer did not harm consumers. However, even if this exhibit were deemed to be calculating the correct comparison to begin with, the exhibit is riddled with inconsistencies and accounting irregularities, as the People established in cross-examination and in their Briefs. (The Company did not present Exhibit 19.3 until the surrebuttal stage of testimony, depriving the AG’s expert witness, David J. Effron, of an opportunity to address that exhibit’s infirmities directly in testimony.) The PO relies on AIC Ex. 19.3 to demonstrate that “the transfer of assets with the step up in cost basis benefitted customers overall.” However, AIC Ex. 19.3 is the product of highly questionable and end-result-oriented assumptions that were obviously formulated with the intent of producing the conclusion that the Company was seeking.

Ameren Ex. 19.3 is based heavily on the assumption that depreciation on long-lived assets continues forever. For example, in Ameren’s Exhibit 19.3, “Example 1” is an asset from 1960 with an original cost of \$150,959; book depreciation on this asset in both the “Actual with

Step-Up” scenario and the “Hypothetical without Transfer” scenario is recorded in each and every year through 2013 and results in a negative book value of \$371,948. In other words, in Mr. Stafford’s example, depreciation of \$522,907 is recorded on an asset with an original cost of \$150,909. As the People demonstrated at footnote 9 on page 11 of their Initial Brief, the summary lines at the bottom of Column D and Column E on AIC Exhibit 19.3 show that after considering book depreciation through the end of 2013 for *all* the analyzed asset vintages, the sum of net book basis for all fourteen asset vintages sampled is approximately negative \$1.7 million. Asked during cross-examination whether the negative \$1.7 million net book value is representative of the transferred Metro East assets, Mr. Stafford replied: “I don’t look at the negative \$1.7 million as representative of the transferred assets. What I’m looking at is that Account 364 is a good account to review . . . I’m focused more on the fact that Account 364 with various vintages is a good sample to look at for review of the net ratepayer benefit.” Tr. at 146:8-20. Despite his admission that he did not look at the negative net book value as representative of the transferred assets, these overly book-depreciated assets form the whole basis of the supposed ratepayer benefit shown on Ameren Ex. 19.3.

It should also be noted that Mr. Stafford did not make the assumption of indefinitely continuing book depreciation for every asset all the way through 2013 in his original analysis on Ameren’s Exhibit 13.5 (not entered into the record by the Company, but entered by the People as AG Cross Exhibit 6). In his original analysis, book depreciation on each asset in the “Hypothetical Without Transfer” scenario stopped when its net book basis dropped to zero. *See* AG Cross Ex. 6 at 3, first column. In response to AG data requests, the Company acknowledged certain errors in the original Ameren Exhibit 13.5. But rather than simply correcting those errors, the Company prepared a revised version of its Exhibit 13.5, styled as AIC Ex. 13.5R, that

incorporated the new assumption of indefinitely continuing depreciation. Obviously, Ameren used this questionable assumption because it was necessary so that the revised analysis on Ameren Exhibit 13.5R would arrive at the Company's pre-determined conclusion of a ratepayer benefit. As the People showed numerically at footnote 9 on page 11 of their Initial Brief, without this unrealistic book depreciation convention on page 3 in Ameren Exhibit 13.5R, that exhibit would have shown a *total net ratepayer detriment* from the transfer and the accompanying ratemaking treatment rather than the total net ratepayer benefit that Exhibit 13.5R purports to show.

Ameren Ex.13.5R then needed to be revised because that exhibit did not properly reflect the applicable depreciation rates for Ameren Missouri subsequent to the transfer (Tr. at 131-133). If Ameren Ex.13.5R had been corrected only to reflect the applicable depreciation rates for Ameren Missouri subsequent to the transfer, the analysis would have shown a ratepayer detriment. This result was obviously unacceptable to the Company, so the analysis was then changed again to incorporate other inappropriate assumptions (Tr. 139, lines 4-12). The resulting Exhibit 19.3 represented an "expanded" version of Exhibit 13.5R, including older vintages of assets than were included in Exhibit 13.5R. And it is precisely these older vintages (particularly Lines 1-8) that carry the significant negative net book values. Absent the selective inclusion of these older vintages of assets with their problematic negative net book values due to the unrealistic assumption of indefinitely continuing book depreciation in the "Hypothetical Without Transfer" scenario, the analysis on Ameren Ex. 19.3 would show a detriment, not a benefit, to ratepayers.

In summary, the Commission cannot rely on Ameren's Exhibit 19.3 to find that ratepayers received just and reasonable benefits in 2013 from the ADIT associated with the

Metro East assets. In order to drastically deviate from a prior decision, the Commission must have a reasoned basis for doing so, or that decision will be given less deference by reviewing courts. *Citizens Utility Bd. v. ICC*, 651 N.E.2d 1089, 1100 (Ill. S.Ct. 1995). Here, Ameren's flawed exhibits have not provided the Commission with such a reasoned basis. The Commission should approve the People's proposed adjustment to remove the Step-Up Basis deferred tax asset, as it did in Docket No. 13-0301.

Exception No. 1 Proposed Language

The People recommend the following changes to the "Commission Conclusion" section of the PO at pages 17-18 regarding the Metro East ADIT issue:

When the Commission changed course and adopted an adjustment in Docket No. 13-0301 nearly identical to the AG's proposal in this case, it advised parties that any future similar proposals must demonstrate whether AIC ratepayers were or will be harmed by the regulatory treatment of the Metro East assets from UE to CIPS (now AIC). The AG and AIC have both attempted to make that showing. While the AG insists that AIC has failed to demonstrate overall customer benefits, AIC is adamant that it has succeeded.

Having considered the evidence, the Commission is ~~not~~satisfied that the transfer of assets with the step up in cost basis benefitted customers overall, ~~which is consistent with AIC's position.~~ Neither the analysis Mr. Stafford offered in Ameren Ex. 13.5R, nor the expanded analysis Mr. Stafford discusses in his surrebuttal testimony, along with Ameren Ex. 19.3, demonstrate to the Commission's satisfaction that for regulatory treatment purposes, AIC's position is the most appropriate results in consumers receiving a just and reasonable amount of ADIT benefits on the transferred assets. The various analyses offered by Ameren on this topic were characterized by questionable results-oriented assumptions that make it difficult for the Commission to draw a favorable conclusion therefrom. ~~While this outcome is consistent with~~ represents a break from the decision in Docket No. 13-0301, this result is based on the record in this docket and is consistent with Commission orders prior to Docket No. 13-0301 addressing

~~this issue.~~ Accordingly, the AG's proposal is ~~not~~ adopted. To the extent that this or other similar issues are raised in the future, the type of expanded analysis that Mr. Stafford offered would be more helpful if offered earlier in the proceeding.

III. Exception No. 2: If The Commission Declines To Adjust The Reconciliation Balance To Which Interest Applies Pending Resolution By The Appellate Court, The Commission Should Adjust Rate Base By The Reconciliation ADIT.

A recurring issue in Ameren's formula rate dockets has been how to apply interest to the reconciliation balance. First, the question of the interest rate was contested. Now that the General Assembly set the interest rate at the weighted average cost of capital through P.A. 98-0015, the effect of interest on the revenue requirement has grown substantially from what it would have been had the short-term interest rate had been applied.

Last year the Commission declined to limit interest to the net-of-tax reconciliation balance in two cases involving complaints brought by the People against Ameren and Commonwealth Edison Company ("ComEd"). ICC Docket Nos. 13-0501/0517 (cons.), Interim Order at 26 (November 26, 2013); ICC Docket 13-0553, Order at 43 (November 26, 2013). Both of these orders are currently subject to appellate review, but no decision has been entered to date. As an alternative to this adjustment, the People recommend that the Commission recognize that Ameren has identified ADIT related to the reconciliation balance, and that this ADIT be treated as all other delivery, Illinois jurisdictional ADIT. As shown in AG Exhibit 3.1, page 2, Ameren identified \$527,000 in reconciliation related ADIT. *See also* AG Ex. 1.0 at 10-21; AG Ex. 3.0 at 4-22.

The People maintain that this alternative proposal presented by Mr. Brosch is necessary if consumers are going to provide the Company interest on \$24,707,000, being the amount that was

not paid in income taxes because the Company had not received the associated revenue. AG Ex. 2.0 at 10:231 to 11:236. It is undisputed that Ameren recognizes reconciliation-related ADIT in the amount of \$527,000. AG Ex. 1.3 at 2; AG Ex. 1.5. Reconciliation revenues and taxes are clearly distribution-related, arising under Section 16-108.5(d). AG Ex. 3.0 at 21:413, 22:435. By not including this ADIT in its ADIT balance, Ameren would effectively retain the benefit of this tax accounting for shareholders.

The PO accepts Ameren's argument that the Commission should ignore the reconciliation-related ADIT that Ameren itself identified because the reconciliation balance is not part of rate base. While the Company's right to recover the reconciliation revenues from consumers is not defined in the statute as a regulatory asset that would be part of rate base, Ameren receives compensation for the time value of the delay in recovering the reconciliation amount at an interest rate equal to the weighted average cost of capital that is also applied to its rate base. *See* 220 ILCS 5/16-108.5(d)(1). An equitable matching of costs and benefits requires that ratepayers receive the benefit of reconciliation-related ADIT balances because they are responsible for an interest return on reconciliation-related regulatory asset balances under the EIMA.

The Commission's goal is to determine the utility's actual costs with the specific statutory provision that rates include "interest [on the reconciliation-related under- or over-collection] calculated at a rate equal to the utility's weighted average cost of capital" rather than including the under- or over-collection in rate base as a regulatory asset. In addressing statutory terms that may be inconsistent, Illinois courts have made it clear that statutes "relating to the same subject with reference to one another [must be construed] in order to give effect to all the provisions if possible." *Commonwealth Edison Co. v. Ill. Comm. Comm'n*, 2014 IL App (1st)

130544, ¶ 22. If the Commission concludes that the statute prevents it from recognizing the Company's actual reconciliation financing expense by applying interest to only the net-of-tax reconciliation balance, the Commission should apply established ratemaking principles and treat the reconciliation-related ADIT as it treats all other jurisdictional ADIT, despite the statutory directive that the reconciliation under-recovery be subject to "interest" rather than being subject to a return or treated as a regulatory asset.

Exception No. 2 Proposed Language

The People recommend the following changes to the "Commission Analysis and Conclusion" section at pages 41-42 of the PO regarding the alternative rate base adjustment for the reconciliation ADIT issue recommended by the People at pages 19-24 of their Initial Brief:

c. Commission Conclusion

The Commission will address the AG's preferred adjustment below in the discussion of the calculation of interest on the reconciliation balance. ~~While t~~The Commission understands the AG's interest in making its alternative proposal concerning rate base treatment of ADIT associated with the reconciliation balance, and the Commission is not persuaded that such treatment is appropriate given regardless of the conclusion below related to the calculation of interest on the reconciliation balance. All parties appear to agree that the reconciliation balance cannot be in rate base because the statute provides for interest on the reconciliation balanced and does not treat it as a rate base asset. The parties also appear to agree that it is not uncommon to make adjustments related to ADIT when calculating rate base, and in fact, Ameren has identified a net ADIT of \$527,000 in reconciliation related ADIT, representing Ameren's actual ADIT balance and reflecting (1) the December 31, 2012 balance; (2) the adjustment to that balance as a result of the Order in Docket 13-0301; and (3) the December 31, 2013 balance. AG Ex. 3.1, page 2. Recognizing this ADIT in the instant docket will increase rate base because of

the reconciliation credits associated with the prior formula rate order.

While Ameren argues that wWhen such ADIT adjustments are made, however, the ADIT has a connection with an underlying rate base asset, it is clear that the Ameren itself has identified the ADIT shown in AG Exhibit 3.1, page 2 as based on the reconciliation balance. The Commission is concerned that consumers are being asked to both pay interest on taxes that are deferred and pay a return on rate base as if that deferral did not exist. Ameren witness Warren acknowledged that the reconciliation balance and the tax are both deferred, and that Ameren accounts for the reconciliation-related taxes as part of its ADIT account. The reconciliation-related ADIT is plainly related to Ameren's Illinois delivery services and to the Section 16-108.5 reconciliation. Accordingly, in light of our conclusion not to change our prior decision related to the People's recommendation to apply interest to the net-of-tax reconciliation balance, and our conclusion that in fact Ameren has identified Illinois jurisdictional ADIT, the reconciliation-related ADIT shall be included in Ameren's Illinois jurisdictional ADIT and treated the same as all other Illinois jurisdictional ADIT. With the issue at hand, the ADIT serving as the basis for the AG's proposed adjustment has no connection with a rate base asset. Stated another way, because the reconciliation balance can not be in rate base, it would not be appropriate to include the reconciliation ADIT in rate base. Accordingly, the Commission declines to adopt the AG's position on this issue.

IV. Exception No. 3: The People Preserve Their Position That Interest Should Only Be Applied To The Net-Of-Tax Reconciliation Balance.

The PO declines to modify the Commission's conclusion in its Interim Order in Docket Nos. 13-0501/0517 (cons.) to reject the People's recommendation that interest only be applied to the net-of-tax reconciliation balance. PO at 67-68. While the issue is presently before the Appellate Court both for ComEd (Case No. 14-0275, filed January 30, 2014) and for Ameren (see Case No. 4-14-0950, filed October 30, 2014), the People continue to maintain that both

GAAP and proper regulatory accounting require the primary treatment they recommended at pages 30-34 of their Initial Brief, and that it is not just and reasonable to require consumers to pay interest on an obligation (taxes) before it becomes due.

Exception No. 3 Proposed Language

While the People recommend that the Commission make the rate base ADIT adjustment discussed in Exception No. 2 above, the People also maintain, following their primary recommendation on this issue made in their Initial Brief and Reply Brief, that the most accurate accounting for the tax effects of the reconciliation process is to apply interest only to the net-of-tax reconciliation balance. Should the Commission wish to revisit this issue pending appeal, the People propose the following *alternative* (to their Exception No. 2 shown above) language to modify the conclusion on pages 67-68 of the PO.

D. Commission Conclusion

The Commission recognizes that there is still a difference of opinion between the parties in determining how to properly calculate the interest to be paid or refunded as part of the reconciliation process under the EIMA. The AG, CUB, and IIEC all favor the calculation of interest on the reconciliation balance only after that portion of the balance to be collected for taxes has been deducted. In other words, consistent with the EIMA's overall purpose to match revenues with actual costs, they urge the Commission to only apply the interest rate to amounts that AIC will actually have to finance during the reconciliation period. AIC, on the other hand, argues that the EIMA's detailed provisions do not provide for such an adjustment to the reconciliation amounts when calculating interest. AIC is equally adamant that the holdings in *Ameren v. ICC* are inapplicable to the circumstances at hand.

As stated in Docket Nos. 13-0501 and 13-0517 (Cons.), the Commission disagrees with AIC that the EIMA is as clear as AIC contends and continues to find merit in the intervenors' position. The intervenors' approach conforms to GAAP, would capture deferred tax benefits, and is likely a

more accurate accounting for all of the economic impacts caused by the revenue requirement reconciliation. Nevertheless, the Commission continues to be troubled by the fact that although Section 16-108.5(d)(1) fails to prohibit such accounting treatment, the converse is also true—it does not appear to require or even reference it. Further, where the Act does intend that adjustments be made to an amount of a balance, it has done so specifically, as noted in the Interim Order in Docket Nos. 13-0501 and 13-0517 (Cons.). The Commission also observes that this is not the first time the clarity of this subsection concerning the reconciliation balance has been called into question and that the legislature has already once amended it. Thus, it is difficult for the Commission to support an interpretation of the EIMA which reads into it exceptions, limitations, or conditions the legislature did not express. (*Davis v. Toshiba Machine Co.*, 186 Ill.2d 181, 184-185 (1999)).

Considering all of the arguments presented regarding the meaning of Section 16-108.5(d)(1), the Commission ~~can~~ not at this time adopts the intervenors' adjustment. ~~While~~ The ADIT rate base issue in *Ameren v. ICC* supports the conclusion that we should treat ADIT on the reconciliation consistent with standard regulatory and accounting principles. ~~bears some similarity to the reconciliation interest issue at hand, the Commission is reluctant to rely upon the holdings therein in light of the arguments concerning its applicability.~~ The Commission notes that this issue is under judicial review in the appeal of Docket No. 13-0553 relating to ComEd. The Commission anticipates that the outcome of that appeal will provide needed clarity on this issue, but is also confident that its revised view of this issue is consistent with the goal of the EIMA law to allow the utilities to recover their actual costs and consistent with established regulatory practice. ~~Therefore, despite its misgivings about the appropriateness of AIC's position, for purposes of this proceeding, AIC is entitled to the full reconciliation balance without any deduction for ADIT.~~

V. CONCLUSION

WHEREFORE, the People of the State of Illinois respectfully request that the Commission enter a final order consistent with the recommendations in this Brief on Exceptions and in their Initial Brief and Reply Brief, and adopt the Exceptions provided above.

Respectfully submitted,

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